

In 5-4 ruling, state Supreme Court upholds 'medical necessity' defense in Olympia pot-growing case

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The Temple of Justice in Olympia is the meeting place of the Washington State Supreme Court. (TONY OVERMAN/Staff Photographer)

By Brad Shannon — Olympian

A divided Washington state Supreme Court has upheld a necessity defense in a marijuana manufacturing case against an Olympia-area man fined \$4,000 three years ago for possessing 42 marijuana plants and other packaged marijuana. The narrow 5-to-4 majority ruling sends the case back to Thurston County Superior Court for further action.

The case involves **William Kurtz**, who is wheelchair bound due to a medical condition that causes him chronic pain. He was [fined but not sent to jail by Judge Carol Murphy in October 2010](#), according to a report in The Olympian at the time.

The Supreme Court's majority and dissenting opinions handed down Thursday morning are [here](#).

The majority decision was authored by Chief Justice **Barbara Madsen**, joined by Justices **Charles Johnson**, **Debra Stephens** and **Steven Gonzalez** and Justice Pro Tem **Tom Chambers**. Madsen contended the state's Medical Use of Marijuana Act "does not abrogate the common law" allowing a medical necessity defense.

But the dissent – authored by Justice Susan Owens – said “the common law defense of necessity is predicated on a lack of legal alternatives. Washington voters have provided a comprehensive statutory scheme for the use of medical marijuana, enacted by initiative in 1998. Because individuals in this state have a legal way of using medical marijuana, the previously articulated common law defense of medical necessity for marijuana use is not longer appropriate.”

Owens was joined in her dissent by Justices **Mary Fairhurst, James Johnson** and **Charles Wiggins**.

UPDATE: The American Civil Liberties Union of Washington had filed a friend of court brief in the case, and its policy counsel Mark Cooke hailed the ruling. “This ruling is an important victory for the rights of medical marijuana patients in Washington. It recognizes that the voters, lawmakers, and the courts have determined that there are legitimate medical uses for marijuana and that patients should be able to exercise their rights as needed,” Cooke said in a statement.